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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 RANDALL T. TREADWELL,

12 Petitioner,

13 v.  
14

15 UNITED STATES OF AMERICA,

16 Respondent.  
17

CASE NO. 05-CR-1570 W

**ORDER DENYING MOTION  
TO VACATE, SET ASIDE, OR  
CORRECT SENTENCE  
[DOC. 557]**

18 Petitioner Randall T. Treadwell ("Petitioner"), a federal prisoner proceeding *pro*  
19 *se*, filed a motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255.  
20 (*See Mot. to Vacate* [Doc. 557].) The United States of America ("Respondent")  
21 opposes. (*See Opp'n* [Doc. 559].)

22 The Court decides the matter on the papers submitted and without oral  
23 argument. See Civil Local Rule 7.1 (d)(1). For the reasons discussed below, the Court  
24 **DENIES** Petitioner's motion.

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1 **I. BACKGROUND**

2 On September 8, 2005 a federal grand jury indicted Petitioner on one count of  
3 conspiracy to commit wire fraud under 18 U.S.C. § 371 and four counts of wire fraud  
4 under 18 U.S.C. § 134. (*Opp'n Ex. 1-12* [Doc. 559-2] at 2-11.) The indictment alleged  
5 that Petitioner was involved in a massive Ponzi scheme that ultimately defrauded 1700  
6 investors of more than \$40 million. (*Id.*)

7 On May 20, 2008, Petitioner's jury trial commenced in this Court. (*Opp'n Ex.*  
8 *1-12* at 13.) On June 17, 2009, the jury found Petitioner guilty of all counts. (*Id.* at  
9 15.) Petitioner was sentenced to 60 months in custody for one count of violating 18  
10 U.S.C. § 371, and 240 months in custody for four counts of violating 18 U.S.C. § 1343.  
11 (*Id.* at 33.) Petitioner's sentences run consecutively. (*Id.* 34.)

12 Petitioner appealed the sentence, contending that this Court made procedural  
13 and substantive errors under 18 U.S.C. § 3553(a). Treadwell v. United States, 593 F.3d  
14 990, 992 (9th Cir. 2010). On January 28, 2010, the Ninth Circuit affirmed Petitioner's  
15 sentence in all respects, *id.* at 1018, and on October 12, 2010, the Supreme Court  
16 denied Petitioner's petition for a writ of certiorari. Treadwell v. United States, — U.S.  
17 —, 131 S. Ct. 488, 178 L.Ed.2d 309 (2010).

18 On October 20, 2011, Petitioner moved to vacate, set side, or correct his  
19 sentence under 28 U.S.C. § 2255.

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21 **II. LEGAL STANDARD**

22 Under 28 U.S.C. § 2255, a federal sentencing court is authorized to discharge or  
23 re-sentence a defendant if it concludes that "the sentence was imposed in violation of  
24 the Constitution or laws of the United States, or that the court was without jurisdiction  
25 to impose such sentence, or that the sentence was in excess of the maximum authorized  
26 by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255. This statute is  
27 intended to alleviate the burden of habeas corpus petitions filed by federal prisoners in  
28 the district of confinement, by providing an equally broad remedy in the more

1 convenient jurisdiction of the sentencing court. See United States v. Addonizio, 442  
2 U.S. 178, 185 (1979); Hernandez v. Campbell, 204 F.3d 861, 864 n.4 (9th Cir. 1999).

3 The remedy available under § 2255 is as broad and comprehensive as that  
4 provided by a writ of habeas corpus. See United States v. Addonizio, 442 U.S. 178,  
5 184-85 (1979). But this remedy does not encompass all claimed errors in conviction  
6 and sentencing. Id. at 187. A mere error of law does not provide a basis for collateral  
7 attack unless the claimed error “resulted in a complete miscarriage of justice or in a  
8 proceeding inconsistent with the rudimentary demands of fair procedure.” Hamilton  
9 v. United States, 67 F.3d 761, 763-64 (9th Cir. 1995) (quoting United States v.  
10 Timmreck, 441 U.S. 780, 783-84 (1979)).

### 11 12 **III. DISCUSSION**

#### 13 **A. Constitutionality of Procedures for Determining a Criminal** 14 **Sentence**

15 Petitioner argues that his sentence was enhanced by unconstitutional methods.  
16 (*Mot. to Vacate* at 7.) Respondent contends that Petitioner’s § 2255 claims are  
17 inappropriate since they were already decided in Petitioner’s direct appeal. (*Opp’n* 5.)  
18 The Court finds that Petitioner’s claims lack merit.

19 A federal prisoner seeking post-conviction relief by filing a § 2255 motion to  
20 vacate, set aside, or correct his sentence must allege one of three bases for his motion:  
21 (1) an error of constitutional magnitude; (2) a sentence that was imposed outside  
22 statutory limits; or (3) an error of fact or law that was so fundamental as to render the  
23 entire proceeding invalid. See United States v. Addonizio, 442 U.S. 178, 185-86  
24 (1979). However, a prisoner does not have an unlimited ability to raise a § 2255  
25 challenge; claims already raised on direct appeal cannot serve as the basis for a § 2255  
26 motion. United States v. Redd, 729 F.2d 699, 701 (9th Cir. 1985); see also Winthrow  
27 v. Williams, 507 U.S. 680, 721 (1993) (Scalia, J. concurring) (“Thus a prior opportunity  
28 for full and fair litigation is normally dispositive of a federal prisoner’s habeas claim. If

1 the claim was raised and rejected on direct review, the habeas court will not adjudicate  
2 it absent countervailing equitable considerations.”). Moreover, a petitioner may not use  
3 a § 2255 motion to challenge nonconstitutional sentencing errors if such errors were  
4 not challenged in an earlier proceeding. United States v. McMullen, 98 F.3d 1155,  
5 1157 (9th Cir. 1996).

6 Petitioner claims that his motion does not raise issues from his direct appeal.  
7 (*Reply* [Doc 574] at 1.) However, the issues Petitioner challenges—the Ninth Circuit’s  
8 definitions of “on behalf of” and “scheme to defraud,” as well as the Circuit’s use of a  
9 preponderance of evidence standard—were clearly decided on direct appeal. (*Id.* at 2.)  
10 By challenging the Ninth Circuit’s statutory interpretation and application, Petitioner  
11 necessarily re-challenges issues the appellate court already considered and decided.  
12 Moreover, in attempting to raise issues already decided by the Ninth Circuit, Petitioner  
13 endeavors to use this Court as an appellate court to review the Ninth Circuit’s analysis.  
14 This is plainly impermissible, as this Court is not empowered to review the Ninth  
15 Circuit’s legal interpretation. Petitioner’s argument that the Ninth Circuit erred in  
16 affirming this Court’s sentence is an issue that should have been included in his petition  
17 for writ of certiorari to the Supreme Court. Since Petitioner’s § 2255 motion is little  
18 more than a revival of issues decided on his direct appeal, this Court finds that this  
19 ground of Petitioner’s motion lacks merit.

#### 20 21 **B. Ineffective Counsel**

22 Petitioner also argues that he is entitled to vacate, set aside, or correct his  
23 sentence due to ineffective counsel. (*Mot. to Vacate* at 8.) Respondents contend that  
24 Petitioner fails to establish the elements of an ineffective-assistance-of-counsel claim.  
25 (*Opp’n* at 6.)

26 In Strickland v. Washington, 466 U.S. 668 (1984), the Supreme Court  
27 established a two-prong test to determine whether counsel’s assistance was so defective  
28 as to require reversal of a conviction. First, petitioner must show that counsel’s

1 performance was deficient. Id. at 687. In order to prove deficient performance,  
2 petitioner must demonstrate that counsel “made errors so serious that counsel was not  
3 functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id.  
4 In other words, petitioner must demonstrate that counsel’s representation fell below an  
5 *objective* standard of reasonableness, considering all the circumstances presented in a  
6 particular case. Id. at 688. The Supreme Court further elaborated that there is a  
7 “strong presumption that counsel’s conduct falls within the wide range of reasonable  
8 professional assistance. . . .” Id. at 699.

9 The second prong of the Strickland test requires petitioner to prove that  
10 counsel’s deficient performance prejudiced the defense. Strickland, 466 U.S. at 687.  
11 In order to prove prejudice, petitioner must demonstrate that counsel’s errors were so  
12 serious as to deprive the defendant of a fair and reliable trial. Id. Otherwise stated, the  
13 petitioner must demonstrate that there is a reasonable probability that, but for counsel’s  
14 defective assistance, the result of the proceeding would have been different. Id. at 694.

15 Petitioner argues that his counsel’s defense theories were flawed and  
16 demonstrated a misunderstanding of the law. (*Mot. to Vacate* at 8-9; *Reply* at 4.)  
17 Specifically, Petitioner claims that his counsel’s failure to (1) object to the jury  
18 instruction on wire fraud, (2) call witnesses to corroborate Petitioner’s belief in the  
19 viability of the fraudulent investments, and (3) portray Petitioner as a mentally-ill  
20 victim of a larger fraudulent scheme evidences his counsel’s deficient performance. (*Id.*  
21 at 8-10.) However, the Court is persuaded by Respondent’s argument that none of  
22 these claims demonstrate that Petitioner’s representation fell below an objective  
23 standard of reasonableness. Moreover, Petitioner fails to prove that there is a high  
24 probability that the result of his proceedings would have been different even if his  
25 counsel did not commit such “failures.”

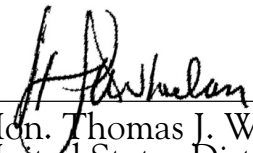
26 Since Petitioner is unable to overcome the strong presumption that his counsel  
27 provided reasonable and professional assistance, the Court finds this argument lacks  
28 merit.

1 **IV. CONCLUSION AND ORDER**

2 In light of the foregoing, the Court **DENIES** Petitioner's § 2255 motion to  
3 vacate, set aside, or correct his sentence. [Doc. 557.]

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5 **IT IS SO ORDERED.**

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7 DATED: July 19, 2013

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11 Hon. Thomas J. Whelan  
12 United States District Judge  
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